

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

ANTONIO SANCHEZ FRANKLIN,

Petitioner, : Case No. 3:12-cv-312

- vs -

NORMAN ROBINSON, Warden,

Respondent. :

District Judge Timothy S. Black
Magistrate Judge Michael R. Merz

REPORT AND RECOMMENDATIONS

This capital habeas corpus case is before the Court following its transfer to the Sixth Circuit after that court dismissed it for want of prosecution. *In re: Antonio Franklin*, Case No. 16-3008 (6th Cir. Mar. 7, 2006)(unreported; copy at ECF No. 26).

This Court previously determined that this case was a second or successive application for a writ of habeas corpus, denied a motion to amend, and transferred the case to the Sixth Circuit for a determination of whether Franklin had permission to proceed under 28 U.S.C. § 2244(b)(2)(Decision and Order, ECF No. 25). Franklin obtained neither a reversal of this Court determination that the case was second or successive nor permission to proceed.

This Court lacks jurisdiction to adjudicate a second or successive application without circuit permission. *Burton v. Stewart*, 549 U.S. 147 (2007). It is accordingly respectfully recommended that this case be dismissed without prejudice for want of jurisdiction.

March 8, 2016.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).